



California Legislature
Senate Energy, Utilities and Communications Committee

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May 24, 2005

Arnold Schwarzenegger, Governor
State Capitol, First Floor
Sacramento, CA 95814

Dear Governor Schwarzenegger:

I appreciate the opportunity to offer my comments on your Governor's Reorganization Plan (GRP) to establish a Department of Energy (DOE) recently proposed and submitted to the Little Hoover Commission.

As you know, for most California residents and businesses, the pain of the 2000-2001 Energy Crisis was inflicted through utility rate increases. Our efforts to recover from the Energy Crisis have been hampered by persistent high rates. In fact, until rates return to pre-Crisis levels, none of us can claim that the Energy Crisis is over. In addition, continued attachment to failed deregulation policies and structures, which inflate costs and undermine energy planning and investment, will threaten California's ability to sustain its recovery from the Energy Crisis.

In light of the often poor performance of energy services for the public in recent years and the uncertainty regarding future performance, it's an appropriate time to consider the role of state government in our energy problems and solutions. While I fully support an examination of California's energy agencies to identify changes to eliminate unnecessary agencies and make needed agencies more effective, efficient and accountable to the public, I believe your Administration needs to place a higher priority on the issues of greatest consequence to ordinary ratepayers – reducing rates and improving service.

As policymakers, our goal should be assuring the delivery of affordable, reliable and sustainable energy services. In actions on energy, these should be your priorities:

1. **Reduce Unreasonable Costs:** Get refunds of the billions owed by energy companies who gouged California ratepayers. Renegotiate over-priced state energy contracts.
2. **Lower Excessive Rates:** Direct the Public Utilities Commission (PUC) to cut excessive costs and lower electricity rates.
3. **Ensure Reliable Service:** Ensure the state is prepared to avert the threat of blackouts and price spikes, particularly in Southern California this summer.
4. **Open Government:** Commit to “sunshine” in energy policymaking.

From this perspective, I have reviewed your proposed GRP and identified the following flaws:

1. The GRP will not reduce costs.

Priority should be given to reducing state costs and reducing energy costs for consumers. The GRP does neither. In fact, in several areas, the GRP is likely to increase costs without providing any discernible benefit. Examples:

- Transferring jurisdiction over utility electric transmission and natural gas projects from the PUC to the DOE appears to shift the state’s role from regulator to project facilitator. As long as utilities are transmission and natural gas owners, economic analysis and ratemaking are critical to project review and approval. However, the GRP eliminates from the review process the established role of the PUC’s Office of Ratepayer Advocates (ORA), as well as public interest intervenors at the CPUC. Disabling the extensive resources and expertise of the ORA and disenfranchising consumer, environmental and community groups is likely to increase, rather than decrease, the cost of utility projects.
- Transferring management of the state’s energy contracts from the Department of Water Resources’ CERS division to the DOE will achieve no identified savings, but will entail administrative and legal costs nonetheless. The state should be trying to hasten the end of its unfortunate foray into supplying electricity for utility customers, not erecting new entities to perpetuate it. Symbolic transfers of other discreet functions from existing agencies to DOE for the appearance of consolidation are also likely to result in administrative costs with no associated benefit.

In addition, by failing to provide greater accountability over the actions of the PUC or the Independent System Operator (ISO), the GRP misses the significant sources of cost in energy governance and does nothing to curb these agencies’ ability to spend ratepayer money without effective oversight.

2. The GRP will make energy decision makers less accountable to the public.

The general thrust of the GRP and several specific provisions are at odds with your stated commitment to “open government.”

There are a number of governmental functions now performed by the California Energy Commission (CEC) and other agencies which require a public process lacking in the GRP’s structure. Examples include adoption of the Integrated Energy Policy Report, implementation of the Renewable Portfolio Standard and dispensing hundreds of millions of dollars each year in public funds.

The GRP transfers authority now held by public officials whose actions are governed by established conflict standards, open meeting laws and other procedural requirements and consolidates decision making in a Secretary of Energy who is not subject to the same standards.

Under the GRP, the Secretary’s actions would be unilateral, with no prescribed process, much less an open process. In one unusual instance, the GRP will enable DOE staff to overturn decisions made in public by your appointees on the governing board of the ISO. Even more troubling and inappropriate, the GRP specifically exempts the Secretary from long-standing conflict of interest standards otherwise applicable to members of the CEC.

One of the criticisms of the state’s experiment with electric restructuring was that there was too little public scrutiny in its development and implementation. I fear the structure you have proposed will be susceptible to an even greater lack of public scrutiny in the development and implementation of as-yet-unspecified energy policies by the Secretary of Energy.

Given the importance of energy to the public, the highest standards of integrity and openness must be maintained. Agency reorganization should strive to improve transparency and public participation in energy decision making, not curtail it.

3. The GRP fails to address potential sources of conflict and duplication.

The two state entities with the most independence from the Governor and greatest impact on electricity prices are the PUC, which directly regulates the rates and practices of electric and gas utilities, and the ISO, which manages the electricity grid. Virtually every anecdote regarding energy agency conflict or duplication implicates either the PUC or the ISO, and often both. However, the GRP scarcely touches on the PUC or the ISO.

In reality, the leaders of state energy agencies have improved their cooperation and coordination in recent years, as evidenced by the adoption and implementation of the “Energy Action Plan.” However, by elevating current CEC functions and leaving the

PUC and ISO out of an otherwise consolidated structure, this GRP may have the perverse effect of hindering cooperation between the “insiders” at DOE and the “outsiders” at the PUC and the ISO.

The omission of the PUC and ISO results in a consolidation of energy agency functions which is largely symbolic, placing a figurehead atop the CEC and several less consequential agencies. If the GRP’s goal is to put a single person in charge of planning and implementing energy policy, it is likely to fail because the Secretary has little jurisdiction over, and hence little ability to guide the actions of, the state’s public and private energy utilities.

Agency reorganization can’t claim to unify energy policy without confronting the potential for conflict and duplication with the PUC and the ISO.

4. The GRP will reduce the state’s effectiveness at the Federal Energy Regulatory Commission (FERC).

Without providing any substantive rationale, the GRP includes a provision which sidelines critical state representatives in the entire range of issues decided at FERC or in any other federal energy regulatory proceeding.

In the name of consolidation, the GRP subordinates to the “leadership” and undefined policies of the DOE:

- The general law enforcement, consumer protection and environmental protection obligations of the Attorney General.
- The specific powers and duties reserved under the Federal Power Act to the PUC as the state’s regulatory commission.
- The Clean Water Act enforcement authority of the State Water Resources Control Board, as well as the Endangered Species Act responsibilities of the Department of Fish and Game, in licensing of hydroelectric projects.

Unlike the DOE, these agencies have unique authority, valuable expertise and a track record of aggressive and effective advocacy on behalf of consumers and the environment in federal venues from FERC all the way to the U.S. Supreme Court. This shortsighted provision is a clear example of a trend in this GRP – valuing form over function, experience and results – to the obvious detriment of the public.

In addition, the process of reorganizing agencies and transferring responsibilities will invariably cause inefficiency, delay and/or inadequate review when we need it least. I am concerned that critical efforts to ensure adequate energy resources will be sidetracked while your administration is distracted by a reorganization initiative that will do nothing to lower rates or keep the lights on.

Governor Schwarzenegger

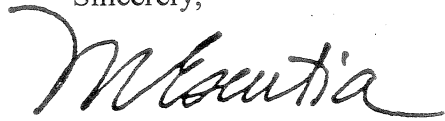
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I would suggest your time would be better spent working with the Legislature to refine and improve California's energy policies and directly addressing issues of greatest consequence to ordinary ratepayers – reducing rates and improving service.

It is clear that you have recognized the importance of energy to the public and I appreciate your attention to this important issue. I stand ready to work with you, but as a “take it or leave it” proposition, I can't support this GRP.

Sincerely,

A handwritten signature in black ink, appearing to read "M Escutia". The signature is fluid and cursive, with a large initial "M" and a trailing flourish.

MARTHA ESCUTIA

cc: Little Hoover Commission